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SENATE BILL 308

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Leonard Lee Rawson

AN ACT

RELATING TO SUBDIVISIONS; PROVIDING FOR JOINT POWERS AGREEMENTS
FOR THE EXERCISE OF EXTRATERRITORIAL AUTHORITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-20-5 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-19-5, as amended) is amended to read:

"3-20-5. COUNTY AND MUNICIPAL JURISDICTION OVER
SUBDIVISION-- CONCURRENT JURISDICTION-- ACCEPTANCE OF UNAPPROVED
STREETS-- EXERCISE OF JURISDICTION. --

A. For the purpose of approving the subdivision and
platting of land:

(1) the jurisdiction of a county includes all
territory not within the boundary of a municipality;

(2) except as provided in Paragraph (4) of
this subsection, the jurisdiction of a municipality having a

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1 population of twenty-five thousand or more persons according to
2 the most recent census includes all territory within five miles
3 of the boundary of the municipality and not within the boundary
4 of another municipality and shall be exercised as provided in
5 Subsection D of this section;

6 (3) the jurisdiction of a municipality having
7 a population of [~~less~~] fewer than twenty-five thousand persons
8 according to the most recent census includes all territory
9 within three miles of the municipal boundary and not within the
10 boundary of another municipality and shall be exercised as
11 provided in Subsection D of this section; and

12 (4) a municipality having a population over
13 two hundred thousand persons according to the most recent
14 census located in a class A county shall share approval
15 authority with the county of subdivisions and platting of land
16 within five miles of the municipal boundary. Approval shall be
17 through the actions of the extraterritorial land use commission
18 and extraterritorial land use authority.

19 B. Each municipality shall have jurisdiction over
20 the territory within its boundary.

21 C. If territory not lying within the boundary of a
22 municipality is within the platting jurisdiction of more than
23 one municipality, the platting jurisdiction of each
24 municipality shall terminate equidistant from the boundary of
25 each municipality unless one municipality has a population

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1 according to the most recent census of [~~less~~] fewer than two
2 thousand five hundred persons and another municipality has a
3 population according to the most recent census of more than two
4 thousand five hundred persons. Then the platting jurisdiction
5 of the municipality having the greatest population extends to
6 such territory.

7 D. Except as provided in Paragraph (4) of
8 Subsection A of this section, the county and a municipality
9 shall exercise concurrent jurisdiction over territory within
10 the platting jurisdiction of both the county and the
11 municipality. Concurrent jurisdiction shall be exercised
12 through a joint powers agreement. A municipality desiring to
13 enter a joint powers agreement to exercise its extraterritorial
14 authority over subdivisions shall pass a resolution requesting
15 that the county enter into a joint powers agreement with the
16 municipality. Within sixty days of the delivery of the
17 resolution to the board of county commissioners, the
18 municipality and county shall enter into good-faith
19 negotiations to create a joint powers agreement. If the
20 municipality and county are unable to agree on a joint powers
21 agreement within one year of beginning negotiations, they shall
22 each appoint two members to a negotiating committee. The four
23 committee members shall appoint a fifth member by unanimous
24 vote. Within six months of the appointment of committee
25 members by the municipality and county, the committee shall

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1 finalize a joint powers agreement for the extraterritorial zone
2 that shall be binding on the municipality and county after
3 approval by the department of finance and administration. In
4 the absence of an approved joint powers agreement for the
5 extraterritorial zone, county subdivision regulations shall
6 apply.

7 E. The governing body of a municipality or the
8 board of county commissioners may not locate, construct or
9 accept any street dedication until the street dedication is
10 first submitted to the planning authority for approval or
11 disapproval. If disapproved by the planning authority, the
12 street dedication may be approved by a two-thirds vote of all
13 the members of the governing body of the municipality having
14 jurisdiction or of the board of county commissioners having
15 jurisdiction. A street dedication accepted by the planning
16 authority or by a two-thirds vote of all the members of the
17 governing body of the municipality having jurisdiction or of
18 the board of county commissioners having jurisdiction shall
19 have the same status as any other public street."

20 Section 2. Section 3-21-3 NMSA 1978 (being Laws 1977,
21 Chapter 80, Section 2, as amended) is amended to read:

22 "3-21-3. PROCEDURE FOR EXTRATERRITORIAL ZONING. --

23 A. Upon the initiative of [any] a municipal
24 governing body or of the board of county commissioners of [any]
25 a county [~~wherein any~~] in which a portion of the

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1 extraterritorial zoning area of the municipality lies, the
2 municipality and the county may enter into an agreement
3 providing for the zoning of that portion of the
4 extraterritorial zoning area lying within the county joining in
5 the agreement. In the absence of such agreement, a petition
6 requesting the zoning of the extraterritorial zoning area and
7 signed by twenty-five percent of the qualified electors
8 residing in the extraterritorial zoning area and within the
9 same county may be filed with the county clerk of the county of
10 the petitioners' residence. Upon the filing of [~~such~~] the
11 petition, the governing body of the municipality and the board
12 of county commissioners shall enter into an agreement providing
13 for the zoning of that portion of the extraterritorial zoning
14 area lying within the county joining in the agreement. [~~Any~~]
15 An agreement entered into pursuant to the provisions of this
16 subsection may be subsequently amended by agreement of both
17 parties.

18 B. The agreement entered into pursuant to
19 Subsection A of this section shall provide for an
20 extraterritorial zoning commission consisting of equal numbers
21 of members appointed by the municipal zoning authority and the
22 county commission; provided that at least one-half of these
23 members shall reside in the extraterritorial zone.
24 Additionally, one member from an area of the county not within
25 the zoning jurisdiction of the municipality or within the area

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1 of the county affected by the proposed extraterritorial zoning
2 ordinance shall be appointed by a majority of the members
3 appointed by the board of county commissioners and by the
4 municipal zoning authority. The agreement shall also provide
5 for a joint municipal-county zoning authority consisting of one
6 or more members of the municipal governing body and one or more
7 members of the board of county commissioners, provided such
8 authority membership shall contain one more county commission
9 member than municipal governing body member.

10 C. No zoning ordinance shall be adopted by the
11 joint municipal-county zoning authority unless the ordinance
12 has been recommended by the extraterritorial zoning commission.

13 D. Within three hundred sixty days of the
14 appointment of the last member to be appointed, the
15 extraterritorial zoning commission shall recommend to the joint
16 municipal-county zoning authority a zoning ordinance applicable
17 to all or any portion of the extraterritorial zoning area lying
18 within the county joining in the agreement pursuant to
19 Subsection A of this section. The ordinance shall also
20 provide, subject to the restrictions of
21 Section 3-21-6 NMSA 1978, for the manner in which zoning
22 regulations, restrictions and the boundaries of districts are:

- 23 (1) determined, established and enforced; and
24 (2) amended, supplemented or repealed.

25 E. Municipal zoning jurisdiction over an

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1 extraterritorial zone shall only be exercised through a joint
2 powers agreement with the county that shares concurrent
3 jurisdiction. A municipality desiring to enter a joint powers
4 agreement to exercise its extraterritorial authority over
5 subdivisions shall pass a resolution requesting that the county
6 enter into a joint powers agreement with the municipality.
7 Within sixty days of the delivery of the resolution to the
8 board of county commissioners, the municipality and county
9 shall enter into good-faith negotiations to create a joint
10 powers agreement. If the municipality and county are unable to
11 agree on a joint powers agreement within one year of beginning
12 negotiations, they shall each appoint two members to a
13 negotiating committee. The four committee members shall
14 appoint a fifth member by unanimous vote. Within six months of
15 the appointment of committee members by the municipality and
16 county, the committee shall finalize a joint powers agreement
17 for the extraterritorial zone that shall be binding on the
18 municipality and county after approval by the department of
19 finance and administration. In the absence of an approved
20 joint powers agreement for the extraterritorial zone, county
21 subdivision regulations shall apply."

22 Section 3. Section 3-21-14 NMSA 1978 (being Laws 1965,
23 Chapter 300, Section 14-20-12, as amended) is amended to read:

24 "3-21-14. ADOPTION OF COUNTY ZONING ORDINANCES. --

25 A. Ordinances authorized under Section 3-21-13 NMSA

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1 1978 may be proposed by any member of the board of county
2 commissioners but shall not be submitted to the board for final
3 passage until after publication.

4 B. A majority of the board [~~members~~] of county
5 commissioners may order publication of the title and a general
6 summary of a proposed ordinance in a newspaper of general
7 circulation in the county at least once a week for two
8 consecutive weeks prior to the date of the meeting of the board
9 at which the ordinance is to be submitted for final passage.
10 The date of the meeting shall be included in the published
11 notice. The style and form of the ordinance shall be
12 determined by the board.

13 C. A proposed ordinance shall be passed only by a
14 majority vote of all the members of the board of county
15 commissioners, and an existing ordinance shall be repealed by
16 the same vote.

17 ~~[D. The original copy of the ordinance together~~
18 ~~with the proof of publication and supporting maps shall be~~
19 ~~filed in a book kept for that purpose and authenticated by the~~
20 ~~signature of the county clerk. The county clerk shall keep the~~
21 ~~book together with supporting maps in his office. The title~~
22 ~~and a general summary of the ordinance shall be published in a~~
23 ~~newspaper of general circulation in the county once each week~~
24 ~~for two consecutive weeks, the last date of publication being~~
25 ~~not less than fifteen nor more than thirty days prior to the~~

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1 ~~effective date of the ordinance. No ordinance shall take~~
2 ~~effect until at least fifteen days after the last date of~~
3 ~~publication. It is a sufficient defense to any prosecution for~~
4 ~~violation of an ordinance to show that no publication was made.~~
5 ~~Copies of the proposed ordinance shall be made available to~~
6 ~~interested persons during normal and regular business hours of~~
7 ~~the county clerk, upon request and payment of a reasonable~~
8 ~~charge, beginning with the date of publication and continuing~~
9 ~~to the date of consideration by the board of county~~
10 ~~commissioners.~~

11 ~~E. Whenever the book of ordinances is introduced as~~
12 ~~evidence, the rules of civil procedure shall govern.]"~~

13 Section 4. REPEAL. -- Section 3-20-9 NMSA 1978 (being Laws
14 1965, Chapter 300, Section 14-19-8) is repealed.